



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THERESA ANDRIULLI, on behalf of herself :
and others similarly situated, :
Plaintiff, : **ORDER**

v. : 19 CV 5165 (VB)

DANONE NORTH AMERICA, LLC, :
Defendant. :
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On October 25, 2019, defendant filed a motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Doc. #16).

Accordingly, it is hereby ORDERED that, by no later than November 4, 2019, plaintiff must notify the Court by letter, with copies simultaneously delivered to defendant's counsel, whether (i) she intends to file an amended complaint, or (ii) she will rely on the complaint that is the subject of the motion to dismiss.

If plaintiff elects not to file an amended complaint, any motions to dismiss will proceed in the regular course, and the Court is unlikely to grant plaintiff a further opportunity to amend to address the purported deficiencies made apparent by the fully briefed arguments in defendant's motion. See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 190 (2d Cir. 2015) (leaving "unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility"). The time to file opposing and reply papers shall be governed by the Federal Rules of Civil Procedure and the Local Civil Rules, unless otherwise ordered by the Court.

If plaintiff elects to file an amended complaint, she must file the amended complaint by no later than 14 days after notifying the Court of her intent to do so. Within 21 days of such amendment, defendant may either (i) file an answer to the amended complaint, (ii) file a motion to dismiss the amended complaint, or (iii) notify the Court by letter that it is relying on the initially filed motion to dismiss.

Dated: October 28, 2019
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent L. Briccetti".

Vincent L. Briccetti
United States District Judge